

***Remarks***

Reconsideration of this application is respectfully requested.

Upon entry of the foregoing amendment, claims 1 and 4-28 are pending in the application, with claims 1, 19, and 20 being the independent claims. Claims 2 and 3 were previously cancelled. Claims 13 and 20 are currently amended. New claims 25-28 have been added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendments and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

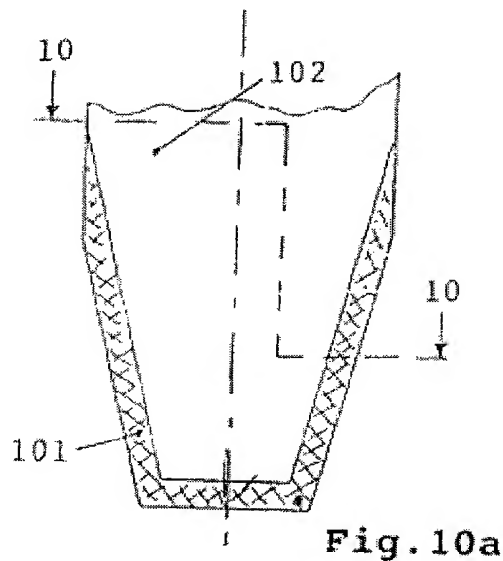
***Rejections under 35 U.S.C. § 103***

***I. Claims 1, 4, 5, and 13-19***

Claims 1, 4, 5, and 13-19 have been rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Patent No. 5,102,010 to Osgar et al. ("Osgar") in view of U.S. Patent No. 4,976,707 to Bodicky et al. ("Bodicky"). Applicants respectfully traverse.

**A. Independent claim 1**

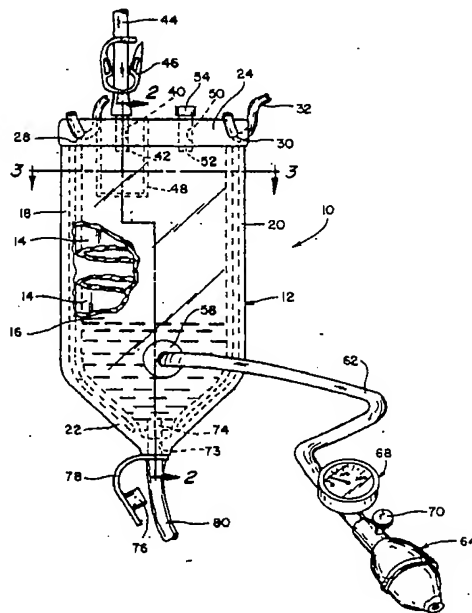
Claim 1 recites, a "foil bag having at least one welded seam of a substantially T-shaped or substantially V-shaped configuration to seal edges of said foil bag and close a first end of said foil bag." A V-shaped configuration of a seam to close an end of a foil bag is illustrated, for example, in the embodiment of Figure 10a of the present application. (reproduced on next page).



The Examiner admits that "Osgar does not expressly disclose the bag having at least one welded seam of a substantially T-shaped or substantially V-shaped configuration." *See* Office Action, page 5. The Examiner asserts that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make the welded seam of a collapsible bag of Osgar of the V-shaped configuration, as taught by Bodicky in order to utilize the collapsible bag of the conventionally known configuration." Applicants respectfully disagree.

As provided by claim 1, a seam of a substantially T-shaped or substantially V-shaped configuration closes a first end of the foil bag, and a flange is connected to a second end of the foil bag and has a guide passage for fitting the container to a discharge connection member. For example, as shown in the embodiment of Figure 1 of the present application, contents of a bag 11 can be discharged via a hole 15, which is located on the *opposite* end of the bag relative to the end closed by a seam 13.

In contrast, Bodicky discloses an apparatus adapted for collecting, storing, and infusing or reinfusing a substance, such as blood, taken from a patient. Figure 1 of Bodicky (reproduced below) shows a side elevational view of an embodiment of a bag structure of the apparatus.



Bodicky discloses that a "lower V-shaped end portion 22 of the device 10 has an outlet port 73" provided with a tubular fitting 74 that extends outwardly from the lower end of the device so that contents of the bag 12 can drain out by gravity and be fed into a patient. *See* Bodicky, column 4, lines 58-68. Thus, the bag of Bodicky essentially funnels fluid, such as blood, to be infused into a patient through a port 73 in the bottom seam. The V-shaped end portion 22 does not "*close*" the end of the bag, but rather defines a funnel for outlet port 73. Consequently, a skilled artisan, reading Bodicky, may have considered modifying the bag 12 of Osgar so that the seam at the end of the bag having a fitment 14 was V-shaped, *but would not* have been motivated to modify the

seam at the *closed end* of the bag opposite of fitment 14, since the V-shaped seam of Bodicky does not fully close the bag. Accordingly, neither Osgar nor Bodicky, alone or in combination, disclose or render obvious the claimed invention. Claim 1 and claims 4, 5, and 13-18, which depend from claim 1, are patentable. Applicants therefore respectfully request these rejections be withdrawn.

B. Dependent claim 4

Claim 4 recites that the pierceable membrane is "an integral portion of said flange." As described in the specification at, for example, paragraph [0071], a membrane 78 is produced with an upper part 72 in one working operation. As such, the membrane is an integral portion of the upper part 72. The Examiner asserts that membrane 60 of Osgar is an integral portion of the flange. *See* Office Action, page 5. Applicants respectfully disagree. Osgar merely discloses that this is an air-tight seal between fitment 14 and membrane 60. *See* col. 4, lines 22-23 of Osgar. Osgar does not disclose that the membrane is an integral portion of the fitment. Applicants respectfully request the rejection of claim 4 be withdrawn.

C. Independent claim 19

Claim 19 recites a "foil bag including at least one welded seam of a substantially T-shaped or substantially V-shaped configuration to seal edges of said foil bag and close a first end of said foil bag." As described above with respect to claim 1, Bodicky discloses a V-shaped end portion 22 that does not "close" the end of the bag, but rather defines a funnel for outlet port 73. Consequently, a skilled artisan, reading Bodicky, would not have been motivated to modify the seam at the *closed end* of the bag opposite of fitment 14, since the V-shaped seam of Bodicky does not fully close the bag.

Accordingly, neither Osgar nor Bodicky, alone or in combination, disclose or render obvious the claimed invention.

Further, claim 19 recites a flange that is "fish-like in form." An example of a flange being "fish-like in form" is illustrated in the embodiment of Figure 2, showing a flange 24. *See also* paragraph [0062] of the specification. As shown in that embodiment, flange 24 has a shape that can be considered elliptical but non-circular, like that of an open fish mouth. Fitment 14 of Osgar is not fish-like in form. Rather, as shown in Figure 4a of Oscar, fitment 14 is *circular* in form. Bodicky does not cure this deficiency of Oscar.

For at least the foregoing reasons, claim 19 is patentable. Applicants therefore respectfully request these rejections be withdrawn.

## ***II. Claims 6-12***

Claims 6-12 were rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Osgar in view of Bodicky and further in view of U.S. Patent No. 3,878,977 to Carlisle ("Carlisle"). Claims 6-12 are dependent on claim 1. Carlisle does not cure the deficiencies of Osgar and Bodicky with respect to claim 1. Claims 6-12 are therefore patentable for at least the same reasons as discussed above with respect to claim 1. Applicants therefore respectfully request these rejections be withdrawn.

## ***III. Claims 20-22 and new claim 28***

Claims 20-22 were rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Patent No. 5,176,654 to Schreiber ("Schreiber") in view of Osgar.

Independent claim 20 is directed to a "propellant gas-free atomizer." The Examiner asserts that Schreiber discloses an atomizer with a discharge connection for dispensing medicament disposed in the attached vial 12. *See* Office Action, page 10.

The Examiner further asserts that it would have been obvious to one having ordinary skill in art "to modify the vial of Schreiber with the collapsible container, as taught by Osgar, because such modification would decrease the cost of the system." *See* Office Action, page 11.

Applicants disagree that Schreiber and Osgar render obvious the claim invention. Schreiber and Osgar do not suggest that the spray dispenser of Schreiber could successfully operate using a bag instead of vial 12 with a reasonable expectation with of success. Schreiber discloses a vial 12 within which extends a fluid suction tube 29 of a pump 14. Pump 14 causes fluid to flow through suction tube 29 (by suction) into a fluid chamber 30 prior to discharging the fluid to the remainder of the apparatus. Schreiber does not disclose that the pump can be successfully used with a bag as vial 12.

Oscar does not disclose that its container can be used with a pump such as taught by Schreiber for dispensing a spray. Osgar discloses a container for storing liquid chemicals that can be used with manual or automated dispensing systems. For the manual system, Osgar discloses that the container is inverted for gravity-assisted dispensing. For the automated system, Osgar discloses that the container is placed in a pressure vessel and a pressurized gas is applied to the exterior of the bag 12 to squeeze the contents out of the bag. *See* col. 5, lines 64 to col 6, line 8 of Osgar. In either system, a pump is not used to create a suction to pull the contents from bag 12.

Since Schreiber and Osgar do not suggest that a collapsible bag can be used with a pump to draw out fluid, a skilled artisan would not have had a reasonable expectation that a collapsible bag could be successfully used with the discharge connection of Schreiber, and *would not* have modified the vial of Schrieber with a collapsible bag.

In sum, the Examiner has not shown the claimed invention is obvious. For at least the foregoing reasons, claim 20, and claims 21, 22 and new claim 28, which depend from claim 20, are patentable. Applicants therefore respectfully request these rejections be withdrawn.

A. New claim 28

New dependent claim 28 recites that the at least one welded seam of the foil bag has a substantially T-shaped or substantially V-shaped configuration. As recited in independent claim 20, the at least one welded seam seals the edges of the foil bag and closes a first end of said foil bag. None of the cited references disclose a substantially T-shaped or substantially V-shaped configuration to seal edges of the foil bag and close a first end of the foil bag. As noted above with respect to claim 1, the Examiner admits that Osgar does not disclose a seam with a substantially T-shaped or substantially V-shaped configuration. Bodicky discloses a V-shaped end portion 22; however, end portion 22 does not "close" the end of the bag. Schreiber does not disclose a bag. For at least the foregoing reasons, new claim 28 is patentable. Applicants therefore respectfully request these claims be allowed.

***IV. Claims 23 and 24***

Claim 23 was rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Schreiber in view of Osgar and further in view of U.S. Patent No. 6,303,152 to Kief ("Kief"). Claim 24 was rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over Schreiber in view of Osgar and further in view of U.S. Patent No. 5,934,273 to Andersson ("Andersson"). Kief and Andersson do not cure the deficiencies of Schreiber and Osgar with respect to claim 20. Claims 23 and 24 depend from and add features to claim 20; therefore these claims are patentable for at

least the same reasons as discussed above with respect to claim 20. Applicants therefore respectfully request these rejections be withdrawn.

***V. New claims 25-27***

New claims 25-28 have been added. Claim 25 is dependent on claim 1. Claim 26 is dependent on claim 19. Claim 27 is dependent on claim 20. Accordingly, these claims are patentable for at least the same reasons as discussed above with respect to claims 1, 19 and 20. Further, new claims 25-27 recite that the "pierceable membrane is disposed *within* said guide passage." None of the cited references disclose this feature. The Examiner asserts that Osgar discloses a pierceable membrane 60. *See* Office Action, page 4. However, membrane 60 of Osgar is located on the *end* of fitment 14 to close a mouth 22 of fitment 14. *See* Figs. 3, 4B and 10 of Osgar. Membrane 60 is not *within* a guide passage of fitment 14. For at least the foregoing reasons, new claims 25-26 and 28 are patentable. Applicants therefore respectfully request these claims be allowed.



Reply to Office Action of April 10, 2009

Freund *et al.*  
Appl. No. 10/754,499

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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